

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,)	
)	4:07cv3047
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	(appeal)
)	
RON RIETHMUELLER, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 9, the Notice of Appeal filed by the plaintiff, Billy Tyler, a prisoner, and filing no. 10, the Memorandum from the Clerk of Court inquiring whether the plaintiff will be proceeding in forma pauperis ("IFP") on appeal. The plaintiff seeks to bring an interlocutory appeal of filing no. 5, the Memorandum and Order in which I denied his Application to Proceed IFP in the district court for the same reason I now deny leave to proceed IFP on appeal.

The plaintiff is a prisoner subject to the "three-strikes" provision of the Prison Litigation Reform Act ("PLRA"). Therefore, he now becomes liable for the full appellate filing fees. 28 U.S.C. § 1915(g) states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

As the "three strikes" provision applies to the plaintiff, and as this case does not

meet any exception, the plaintiff shall have until March 28, 2007, to pay the full \$455 appellate filing fees to the Clerk of the District Court. The Clerk of Court shall serve notice of this decision on the parties and the Eighth Circuit Court of Appeals and shall process this appeal to the Eighth Circuit.¹

SO ORDERED.

March 12, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

¹In addition, the plaintiff's pending Motion for a Temporary Restraining Order (filing no. 8) is denied.